

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4049 of 1996

to

FIRST APPEAL No 4084 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
- [3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

SPECIAL LAND ACQUISITION OFFICER

Versus

BABABHAI SHANKARLAL PATEL

Appearance:

Mr. Prashant G. Desai, GP for Appellants

CORAM: S.D. SHAH, J.

Date: 8th August, 1997

ORAL COMMON JUNDGMENT

1. This First Appeals are preferred by the Special Land Acquisition Officer, Dharoi Canal Project, Visnagar,

under Section 54 of the Land Acquisition Act read with Section 96 of the Code of Civil Procedure. Since common judgment and award is passed by Extra Assistant Judge, Mehsana, dated 29th of April, 1995, in Land Acquisition Reference Case Nos. 1789 of 1990 to 1824 of 1990 and since such common judgment and award is under challenge in this group of Appeals and since the question of law and facts arising in the Appeals are common, they are heard together at the admissional stage and are disposed of by this common judgment and order.

2. The respondents are the claimants, whose lands were acquired under the provisions of the Land Acquisition Act. The Executive Engineer, Dharoi Yojna has made the proposal to acquire the lands of the respondent claimants of village Piludara, Taluka and District Mehsana for the aforesaid public purpose. The Notification under Section 4 of the Land Acquisition Act was published in the official gazette on 19th January, 1989 followed by Notification under Section 6 which was published on 20th July, 1989. The Land Acquisition Officer decided Land Acquisition Case No. 18 of 1988 on 3rd of August, 1990, wherein he awarded Rs. 2/- only per square meter for the lands acquired. It appears that since the amount of Rs.2/- per square meter awarded by Land Acquisition Officer to the claimants was not just, proper and reasonable and was not nearer to the reasonable market value of the land, the claimants of Land Acquisition Case No. 18 of 1988 which was decided on 3rd of August, 1990 preferred a Reference under Section 18 of the said Act. Similarly, references were sought and Land Acquisition Reference No. 1789 of 1990 to 1824 of 1990 were made under Section 18 of the Act. The claimants in the respective references urged before the court that parcels of land acquired were situated adjacent to one another and award of amount of Rs. 2/per Sq. meter for the lands acquired was too low, unreasonable and was not in any case nearer to the reasonable market value of the land. Their case was that looking to the condition, distance, situation, area, size, various other facilities, possibility of future developments and possibility of the parcels of land were capable of multi purpose use as well as the proximity of the land to the developed land, higher amount of compensation ought to have been awarded.

3. Now it is well known and well established that the court determining the amount of compensation shall have to decide as to whether the claimant has claimed the compensation based on the yield method or the method of comparable sale instances of the lands in the vicinity.

The court shall also have to keep in mind the fact that such sale instances are real, genuine and bona fide sale instances of the comparable land situated in the vicinity or neighbourhood of the land under acquisition and instances which are not bona fide or the instances where the land is sold for the purpose of enhancing the amount of compensation with respect to other parcels of land having come to know about the possible acquisition of the land in question, cannot be said to be the comparable or bona fide sale instances. Every attempt shall have to be made by the court of law to reach nearer to the reasonable market value of the land and any attempt to push up the value of the land by some non-comparable sale instances is to be discouraged by the court. The amount of compensation which is to be awarded to the claimant shall have to be reasonable amount of compensation and the court in such circumstances shall have to be more alive, reasonable and prudent. It is not the case of just distributing the amount lavishly to the claimants as every sincere and purposeful attempts shall have to be made by the court to reach nearer to the reasonable market value of the land and to award such amount only to which the claimants would be entitled.

4. In this group of First Appeals, the yield of agricultural produce method is not relied upon by the claimants and the claimants have relied upon the reasonably comparable sale instances at which the lands in the vicinity of the acquired lands were situated. Therefore, it is a second method which shall have to be applied and even while applying such method, the court shall have to keep in mind the size of the land, the area of the land, the vicinity of the land to the lands of comparable sale instances. If the comparable sale instances is the method on which the claimants have relied upon and if such comparable sale instances are not found to be not just and inspired sale instances with a view to increasing the price of the lands so that more amount of compensation could be received by the claimants, the court would prefer to reject such sale instances and would not like to fall back upon such sale instances for the purpose of awarding compensation.

5. Mr. Prashant G. Desai, learned Government Pleader very vehemently submitted that the additional compensation of Rs. 8/- was on the higher side and the Reference Court should have awarded lesser amount of compensation. He also very vehemently contended that it was the public purpose which was paramount and that when the lands are acquired for public purpose, the additional compensation of Rs. 8/- awarded by the Reference Court

was not reasonable and was somewhat on the higher side. He also very vehemently submitted before the court that any amount lesser than the amount of Rs. 10/- per square meter which could be said to be just, proper and reasonable, could have been awarded as compensation.

6. Having given my considered thought to the aforesaid vehement submission of Mr. Prashant Desai, learned Government Pleader, in my opinion, the court below, namely, the Court of Extra Assistant Judge, Mehsana, cannot be said to be unreasonable or over liberal in awarding the additional amount of Rs. 8/- per square meter to the claimants. The facts which are relevant for the purpose of deciding the compensation by the method of comparable sale instances are by this time well established. In the present case, one of the claimants has given his deposition being Claim in LAR Case No. 1809 of 1990. He himself is the claimant. It cannot be disputed that he has himself seen the various parcels of land which were sought to be acquired. It is not a matter of serious dispute that the lands sought to be acquired are situated adjacent to each other. It is also not disputed that they are equal in level and fertility. Ordinarily, while falling back upon the method of sale instances, the question which is required to be asked is as to what a willing purchaser would like to pay having regard to the condition, distance, situation, area, size, facilities, possibility of future developments and possibility of multi purpose use of the land in question. The method of capitalising the overall net income or the income of agricultural produce is not one which is pressed into service in the present case.

7. The claimants have relied upon the sale instances of the parcels of land in the vicinity and sale instances which were in every respect comparable. The witness Vadilal Satishbhai who is an agriculturist and who is employing modern technology for the purpose of cultivating the land, is one who is using certified seeds, fertilizer, insecticides, pesticides, etc. It is he who has deposed that in his land as well as the various other parcels of land which were sought to be acquired, three crops in a year were taken and the lands were irrigable lands as there were bores and/or wells in the lands in question and the facility of water was, therefore, available. All parcels of land were therefore irrigable lands and the claimants were not solely depending upon the rainfall which may be irregular also. It was, therefore, possible for the claimants to take three crops in a year and ordinarily they were growing juwar, millet, cotton and pulse in the monsoon season

while in the winter season they were growing mustard, wheat, cummin and castor and in summer, they were growing millet, luchke, so his case that they were earning Rs. 12,000/- to Rs. 13,000/- from the agricultural produce of one bigha land per year and after deducting the costs of seeds, manure, etc., there was net income of approximately Rs. 8,000/- to Rs. 9,000/- from one bigha of land. It is also clearly stated that the village in which the lands were situated is very fastly developing village. There is a Gram Panchayat, Milk Co-operative Society, Seva Sahkari Mandal, Grofed Mandli, Post Office, Telephone Exchange, Bank, Primary and Secondary Schools, Water bores, electricity, etc. The parcels of land in question are also situated in the vicinity of 4 to 5 Kms. from Headquarter at Mehsana which is the important city of North Gujarat. The village in question is also connected with tar road, with other villages and from the Village Form No. 7/12, it would be seen that the lands of some other farmers were also acquired for the very scheme prior to the present acquisition and those farmers have preferred Land Reference Case Nos. 371 of 1990 to 420 of 1990 and in those references, the District Court awarded amount of Rs. 10/- per Sq. meter as market price. He pointed out that the lands of former acquisition and the lands covered by the present acquisition, in their case, are in every respect similar, belonging to the same village and having all facilities which are stated hereinabove. He, therefore, prayed that amount of Rs. 10 per Sq.. meter ought to have been awarded and the amount of Rs.2/- per sq.meter was too low. The fact that the net yearly income of the land is not shown by the agriculturists in their books of accounts is not significant and the agriculturists are not keeping regularly the amount of their agricultural income. On the other hand, the witnesses who are examined by the State or Land Acquisition officer at Exhibits 36 and 37 have no personal knowledge of the lands in question and except that the proposal was made by them for the purpose of acquiring the lands in question he has not been able to throw any light on the additional amount claimed by the claimants was not reasonable. The most important fact is that the land of the prior acquisition and the land covered by the present acquisition are of the same village. They are of the same size, situated in the same village having same fertility and were irrigable lands where yearly three crops were being taken. Despite all efforts made by Mr. Prashant Desai, learned Government Pleader, who assailed the award as on the higher side, he has not been in a position to show that how the earlier judgment and award of the District Court given in LAR No. 371 of 1990 to

420 of 1990 was in every respect bad, unreasonable or on higher side. The lands in the present case being in every respect comparable to the sale instances and the lands in which the higher amount of compensation was awarded, in my opinion, his submission cannot be accepted and it shall have to be said that the Reference Court was right in awarding the additional amount of Rs. 8/- per sq. meter thereby awarding the amount of Rs. 10/- per sq. meter. The amount of Rs. 2/- per sq. meter which was awarded by the Special Land Acquisition Officer was in every respect unreasonable, improper and inadequate and the court below was therefore justified in awarding the additional amount of Rs. 8/per Sq. meter. Mr. Prashant Desai, the learned Government Pleader despite his best efforts, was not in a position to shake the foundation of the award nor was he in a position to state as to how the award of the Extra Assistant Judge, Mehsana was in every respect unreasonable, improper or on higher side. I, therefore, do not find any substance in any of the First Appeals and all these First Appeals are, therefore, summarily rejected. There shall be no order as to costs.

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